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No. 04-562

Supreme Court, U.S.
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In The
Supreme Court of the United States

PATRICIA J. SKONIECZNY,

Petitioner,

v.

THE ECONOMY BOROUGH MUNICIPAL AUTHORITY,

Respondent.

On Petition For Writ Of Certiorari To The Commonwealth Court Of Pennsylvania

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI FOR RESPONDENT ECONOMY BOROUGH MUNICIPAL AUTHORITY

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I. QUESTION PRESENTED

WHETHER THE PENNSYLVANIA SUPREME COURT PROPERLY DECLINED TO CONSIDER THE PETITIONER'S CHALLENGE TO A SINGLE PROVISION OF THE PENNSYLVANIA EMINENT DOMAIN CODE AND HER BASELESS "DUE PROCESS" CLAIM.

TABLE OF CONTENTS

		Page
I.	QUESTION PRESENTED	i
II.	INTRODUCTION	1
III.	RELEVANT FACTUAL BACKGROUND	2
	A. Declaration Of Taking For Temporary Construction Easement	2
	B. Hearings On Preliminary Objections To The Declarations Of Taking	2
	C. Decisions Of The Pennsylvania Commonwealth And Supreme Courts	3
IV.	THE PETITIONER PRESENTS NO BASIS FOR THIS COURT'S REVIEW	4
	A. The Petition For Certiorari Is Untimely	4
	B. The Petitioner's Argument Is Based On A Misunderstanding Of A Pennsylvania Statute	4
	C. The Petitioner Was Provided With Due Process	6
V.	CONCLUSION	7

TABLE OF AUTHORITIES

Page

CASES

Faris Appeal, 254 A.2d 653 (Pa. 1969) 6

Illig v. Chartiers Southern Railway Co., 112 A. 116 (Pa. 1920) 6

In Re Condemnation by Penn Twp., 702 A.2d 614 (Pa. Commw. Ct. 1997) 6

CONSTITUTION

Fifth Amendment 4

STATUTES AND RULES

Section 403(a) of the Pennsylvania Eminent Domain Code, 26 P.S. § 1-403(a) 4, 5

Section 403(c) of the Pennsylvania Eminent Domain Code, 26 P.S. § 1-403(c) 3

Supreme Court Rule 13.1 4

II. INTRODUCTION

The Petitioner, Patricia J. Skonieczny ("Skonieczny"), presents this Court with a factual dispute involving her dissatisfaction with the decision of a municipal authority to exercise its eminent domain authority for a sewage project which she has relentlessly opposed. Petitioner asks the Court to review the Pennsylvania Supreme Court's denial of allocatur with respect to the Pennsylvania Commonwealth Court's affirmance of a trial court decision. She argues that these Pennsylvania decisions are not in accord with the United States Constitution, the Pennsylvania Constitution and the Pennsylvania Eminent Domain Code. Not only is the Petition for Writ of Certiorari untimely, it fails to present any issue warranting this Court's review.

As the decisions of the Pennsylvania courts clearly reflect, the appropriate procedure for condemnation and the determination of just compensation was followed. The trial court properly applied the pertinent and controlling law to the record evidence. Applying the correct appellate standards, the Commonwealth Court properly affirmed the trial court's decision. The Pennsylvania Supreme Court properly exercised its discretion and declined to review the Commonwealth Court's decision. The Petitioner's objection to these decisions does not constitute a compelling reason for certiorari. Thus, Respondent Economy Borough Municipal Authority ("Authority") asks this Court to deny Skonieczny's Petition.

III. RELEVANT FACTUAL BACKGROUND

A. Declaration Of Taking For Temporary Construction Easement.

In May, 2002, as part of a sanitary sewer construction project and pursuant to the requirements of the Pennsylvania Eminent Domain Code, the Authority filed a Declaration of Taking for a temporary construction easement and right-of-way on the Skonieczny property.[1] The stated purpose of the condemnation was to effectuate the public purpose of the extension of sanitary sewer lines and the construction of a wastewater treatment plant so as to provide sanitary sewer services to properties within the Borough of Economy service area. (A-16). Also in accordance with Pennsylvania's Eminent Domain Code, the Authority filed a bond with the county prothonotary's office which was conditioned on the Authority's payment of "such damages as shall be determined by law." (A-17, A-20).

B. Hearings On Preliminary Objections To The Declarations Of Taking.

Notice of the condemnation was served on several condemnees, including the Petitioner. The Petitioner and the other condemnees filed preliminary objections to the various declarations of taking for the sewer project, including claims that the bond filed with the declaration of taking was insufficient and violated both the United

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[1] The easement and right-of-way is 10 feet in width and 165 feet in length and was identified as a "10' TEMPORARY CONSTRUCTION EASEMENT." (A-4-5). The Authority asserted that the value of the construction easement did not exceed $ 250.

States and the Pennsylvania Constitutions. At the first hearing on the preliminary objections, the trial court directed the Authority to post security in the amount of $ 500,000 that was to be placed in an account that would be subject to no withdrawals without court order. (A-20).

Having dismissed her counsel, the Petitioner appeared *pro se* at a second hearing and objected to the form of the $ 500,000 security on the ground that a letter evidencing the fact that the required amount had been deposited had not been "authenticated." The court properly overruled this objection and ultimately, dismissed all of the preliminary objections. (A-15-18).

C. Decisions Of The Pennsylvania Commonwealth And Supreme Courts.

The Petitioner appealed the trial court's decision to the Pennsylvania Commonwealth Court seeking review of the determination that the posted security was sufficient. Consistent with the applicable standard of review, the Commonwealth Court determined that the lower court had properly dismissed the Petitioner's preliminary objection regarding the sufficiency of the posted $500,000; that the Petitioner had been provided with the prescribed due process; and that the Petitioner had failed to show that the bond was insufficient in amount or form. (A-3-14). As the Commonwealth Court recognized, pursuant to Section 403(c) of the Pennsylvania Eminent Domain Code, 26 P.S. § 1-403(c), the Authority had followed the correct procedure and had filed a bond, without security, with its declaration of taking. When the trial court determined that the proposed unsecured bond was not sufficient, the Authority deposited $ 500,000 in account from which

withdrawals could be made "by court order only." (A-12). The Commonwealth Court held that the Petitioner "presented absolutely no evidence to show that this was not sufficient security to cover the temporary construction easement across their property." (A-12).

The Pennsylvania Supreme Court denied Petitioner's petition for allowance of appeal of the Commonwealth Court's decision, thus declining to consider her appeal. (A-1).

IV. THE PETITIONER PRESENTS NO BASIS FOR THIS COURT'S REVIEW

A. The Petition For Certiorari Is Untimely.

The Pennsylvania Supreme Court issued its order denying the Petitioner's Petition for Allowance of Appeal on April 27, 2004. Pursuant to Supreme Court Rule 13.1, the Petition for Certiorari, submitted as of September 30, 2004 and filed on October 27, 2004, was thus untimely.

B. The Petitioner's Argument Is Based On A Misunderstanding Of A Pennsylvania Statute.

Although the Petitioner cites the Fifth Amendment of the United States Constitution, she does not present any question of federal import. Instead, based on an apparent misunderstanding of the relevant section of the Pennsylvania Eminent Domain Code, she complains that the $ 500,000 the Authority posted as security was inadequate because it was not posted contemporaneously with the declaration of taking and thus did not "secure" the taking. Section 403(a) of the Eminent Domain Code provides:

> every condemnor shall give security to effect the condemnation by filing with the declaration of taking **its bond, without surety**, to the Commonwealth of Pennsylvania for the use of the owner or owners of the property interests condemned, the condition of which shall be that the condemnor shall pay such damages as shall be determined by law . . .

26 P.S. § 1-403(a) (emphasis supplied). Upon preliminary objection of the condemnee, the trial court may require the condemnor to post additional security for the taking as the trial court did here by requiring the Authority to post $ 500,000 in a restricted bank account.

The Petitioner does not seem to take issue with the adequacy of the amount posted. In fact, as the Commonwealth Court noted, she presented no evidence that the security was insufficient as to the temporary construction easement at issue. (A-12). Rather, the Petitioner's argument is directed at the Pennsylvania statute which allows a condemnor to file with its declaration of taking, a bond "without surety." This procedure, however, which has been in place in Pennsylvania since 1964, is entirely consistent with both the United States Constitution and the Pennsylvania Constitution. As the Pennsylvania Eminent Domain Code makes clear, on the bond of the condemnor, "the condemnor shall pay such damages as shall be determined by law . . . "[2] Thus, consistent with the law, the condemnor confirms its obligation to pay just compensation

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[2] As the Commonwealth Court noted, the Comment of the Joint State Government Commission to Section 403(a) of the Code explains that it was the intent of the Pennsylvania Legislature that the bond filed be an open end bond and not in some fixed amount. (A-10-11).

to the condemnee and pledges its power to levy taxes or to charge fees to pay any compensation that is required. As the Commonwealth Court recognized, this practice predates the current Eminent Domain Code and has long been upheld by Pennsylvania's Courts. (A-11, citing *Illig v. Chartiers Southern Railway Co.*, 112 A. 116, 117 (Pa. 1920)); *see also In Re Condemnation by Penn Twp.*, 702 A.2d 614, 617 (Pa. Commw. Ct. 1997).

The Petitioner's objection to Pennsylvania's well-settled and lawful procedure does not warrant this Court's review.

C. The Petitioner Was Provided With Due Process.

The Petitioner also complains of violation of her right to a hearing and to due process. Again, as the Commonwealth Court held, based on the record evidence, the trial court satisfied its obligation to provide the Petitioner with the opportunity to participate in evidentiary hearing and to address the relevant evidentiary issues. Petitioner's complaint as to the specific evidentiary issues and conduct of the hearing are, as the Commonwealth Court found, without merit. The Commonwealth Court determined that the trial court had satisfied its obligation both to receive an answer and to conduct a hearing on the Petitioner's preliminary objections. (A-12-13, citing *Faris Appeal*, 254 A.2d 653 (Pa. 1969)). In fact, the trial court held a second hearing specifically to address Petitioner's objections.

The Commonwealth Court also properly resolved the Petitioner's complaint regarding the trial court's admission of a bank letter which verified the establishment of the $ 500,000 account to pay the condemnees. As the court

held, admission of the letter was irrelevant to the actual issue before the trial court. Thus, the Petitioner's claim of "prejudicial error" has no basis in fact or law.

V. CONCLUSION

For these reasons, the Respondent respectfully asks this Court to deny the Petition for Writ of Certiorari.

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